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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,395	03/26/2001	Edward Schwalb	P20688	7224

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EXAMINER

FREJD, RUSSELL WARREN

ART UNIT	PAPER NUMBER
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2128

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DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

File

Office Action Summary	Application No. 09/816,395	Applicant(s) SCHWALB ET AL.	
	Examiner Russell Frejd	Art Unit 2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2 and 4</u> . | 6) <input type="checkbox"/> Other: _____ |

Examination of Application #09/816,395

1. Claims 6-13 of application 09/816,395, filed on 26-March-2001, are presented for examination. This application is CON of 09/034,356, filed on 4-March-1998, now U.S. Patent No. 6,256,595.

Double Patenting Rejections

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.3218 may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 6-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6,256,595. Although the conflicting claims are not identical, they are not patentably distinct from

each other because the present invention and the patent are each directed to a dimensioning system for a computer generated 3-D model of a sheet metal part including a plurality of entities and a repositioner.

Claim Rejections under 35 U.S.C. § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by LoNegro et al., hereinafter LoNegro, patent no. 5,548,707.

5.1 LoNegro disclosed the invention as claimed, including a computer-aided design and drafting system, including dimension indicators in a drawing to identify the dimensions of one or more geometric objects in the drawing, the system comprising:
a list of objects and corresponding dimension types and text locations [col. 7, Table 1], wherein after the user indicates a placement location, the system displays the indicator in the vicinity of that location [col. 7, lines 38-41 and Fig. 6B](applicant's repositioner for repositioning the dimension to a desired position relative to the model, and a display of the dimension at the desired position).

Claim Rejections under 35 U.S.C. § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering the objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 7-13 are rejected under 35 U.S.C. 103 as being unpatentable over LoNegro et al., hereinafter LoNegro, patent no. 5,548,707, in view of Fitzgerald, Jr. et al., hereinafter Fitzgerald, patent no. 4,855,939.

7.1 LoNegro teaches a computer-aided design and drafting system, including dimension indicators in a drawing to identify the dimensions of one or more geometric objects in the drawing [col. 1, lines 38-41], and [col. 2, lines 20-27] programming means for controlling the system to: display at least one geometric object (applicant's model representation on a display);

determining the geometry of the displayed object (applicant's selecting candidate entities from an indicator)[see also col. 10, lines 5-8];

choosing one of a plurality of possible dimension indicators for the object based on the determination in the previous step (applicant's dimension defining system for defining each dimension associated with the selected entities);

displaying an image of the chosen dimension indicator until a placement location is selected for the chosen dimension indicator (applicant's dimension display);

a list of objects and corresponding dimension types and text locations [col. 7, Table 1], wherein after the user indicates a placement location, the system displays the indicator in the

vicinity of that location [col. 7, lines 38-41 and Fig. 6B](applicant's repositioning the dimension and displaying the dimension at the desired position)(claims 9 and 10);

graphically portraying a length indicator including a double-arrowheaded line extending between two endlines, and a text portion that includes a numerical value of the length of the spline's curved surface [col. 7, line 64 through col. 8, line 8, and Figs. 8A-B](applicant's extension line creator for displaying extension lines between each attachment point and the proximate end of a repositioned arrow line)(claim 8); and

entity selections including a circle, an arc, a spline (bend line), a line; and defining the dimension as either a diameter, a radius, or a length [col. 7, Table 1 and lines 36-63](claims 12 and 13).

7.2 Neither LoNegro nor Fitzgerald specifically teach a 3-D sheet metal part model.

However, Fitzgerald discloses a CAD drafting system for drawing 3-D objects, which also includes an automatic dimensioning system. The examiner respectfully takes Official Notice that a collection of geometric models constructed with a CAD drafting system, would include sheet metal materials, since sheet metal is a well known and often-used construction material. A person of ordinary skill in the drafting arts would not want to exclude parts made from flat stock material in the dimensioning system. Accordingly, the person would have been motivated to include dimensioning capabilities that incorporate this construction material.

Response Guidelines

8. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

9. Any response to the Examiner in regard to this non-final action should be

directed to: Russell Frejd, telephone number (703) 305-4839, Monday-Friday from 0630 to 1500 ET, or the examiner's supervisor, Kevin Teska,

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telephone number (703) 305-9704. Any inquiry of a general nature should be directed to the Tech Center 2100 receptionist, telephone number (703) 305-3900. The TC 2100 Customer Service telephone number is (703) 306-5631.

mailed to: Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to: (703) 872-9306

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Fourth Floor (Receptionist).

Date: 9-March-2004



**RUSSELL FREJD
PRIMARY EXAMINER**